

Procurement of the Home Information Pack Central Register – Development of Contract and Associated Legal Issues

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Content of presentation

- Pinsent Masons appointment and role
- Features of service concession contracts
- Particular issues associated with these contracts

Pinsent Masons appointment to advise CLG

- Pinsent Masons appointed at the end of April 2006
- Contract completed in December 2006
- Appointment followed Catalyst tender process
- Other work for CLG:
 - Tenancy Deposit Schemes
 - Pro forma Members Agreement for Certification Schemes and Home Inspectors
 - Currently advising CLG in relation to the Commercial Energy Performance Certificates Register

Pinsent Masons role

- Our principal role was to draft the contract between CLG and Landmark
- We also assisted with bid evaluation and negotiation and the development of the requirements specification and associated schedules
- Close liaison with:
 - CLG legal and policy teams
 - other advisors retained by CLG
 - Landmark as preferred bidder

Features of service concession contracts

- Not a traditional contract for works or services
- Concession is essentially a form of licence entrusting the concessionaire to run infrastructure or services on behalf of the grantor
- In this presentation we are focussing on public to private service concessions
- Private sector models with similar features e.g. franchising
- Grantor is not usually the direct recipient of the service
- Usually the public at large, whether this be companies or individuals
- Transfer of operating risks to concessionaire
- Contract dictates how the concession is to be run

Particular issues associated with these contracts

- Quality of information provided/need for due diligence
- Exclusivity?
- Payment for the service provided by 'users'
 - Setting and adjustment of fees to be charged
 - Volume and credit risk ordinarily borne by concessionaire
 - Some payment by grantor is of course possible
- Development of requirements specification
 - Day 1 requirement
 - Changes
- Ensuring the requirements are met
 - May not be able to operate a conventional deduction or service credit regime
 - Alternatives

Particular issues associated with these contracts



- Use of assets/infrastructure
 - Upgrade of existing
 - Provision of new
- Residual interest in assets:
 - Payment for and ownership of assets
 - Transfer on termination/expiry?
 - Dedicated and shared assets/resources
 - Practicalities
 - Valuation and link to compensation on termination
 - IPR

Particular issues associated with these contracts



- Accounting position
 - Existing International GAAP guidance requires interpretation of numerous standards – some conflicts and room for interpretation
 - UK GAAP has more focussed guidance on PFI/PPP contracts
 - New IFRIC Interpretation 12
 - Brings together and interprets existing IAS and IFRS in the context of service concession contracts
 - Effective for accounting periods commencing on or after 1 January 2008 (retrospective application)
 - Deals primarily with recognition and measurement of existing assets taken over as part of arrangement
 - Deals with issue from concessionaire's perspective only
- Public sector context:
 - Use of OGC model form documentation
 - Public procurement position
 - Potential for state aid